

## Bureau of Indian Affairs, Interior

## § 224.68

records as part of the periodic review and evaluation process under § 224.132. Approved Departmental records retention procedures under the Federal Records Act (44 U.S.C. Chapters 29, 31, and 33) provide a framework the tribe may use to ensure that its records under a TERA adequately document essential transactions, furnish information necessary to protect its legal and financial rights, and enable the Secretary to discharge the trust responsibility if:

(1) Any other party violates the terms of any lease, business agreement, or right-of-way; or

(2) Any provision of a lease, business agreement or right-of-way violates the TERA.

### **§ 224.64 How may a tribe assume management of development of different types of energy resources?**

In order for a tribe to assume authority for approving leases, business agreements, and rights-of-way for development of another energy resource that is not included in the TERA, a tribe must apply for a new TERA covering the authority for the development of another energy resource it wishes to assume. The Secretary's consideration of a new TERA will include a determination of the tribe's capacity to develop that type of energy resource and will trigger the public notice and opportunity for comment consistent with § 224.67.

### **§ 224.65 How may a tribe assume additional activities under a TERA?**

A tribe may assume additional activities related to the development of the same type of energy resource included in a TERA by negotiating with the Secretary an amendment to the existing TERA to include the additional activities. The Secretary will determine in each case whether the tribe has sufficient capacity to carry out additional activities the tribe may wish to assume under an approved TERA.

### **§ 224.66 How may a tribe reduce the scope of the TERA?**

A tribe may reduce the scope of the TERA by negotiating with the Secretary an amendment to the existing TERA to eliminate an activity as-

sumed under the TERA or a type of energy resource development managed under the TERA. Any such reduction in scope must include the return of all relevant Departmental resources transferred under the TERA and any relevant records and documents.

## PUBLIC NOTIFICATION AND COMMENT

### **§ 224.67 What must the Secretary do upon the Director's receipt of a final proposed TERA?**

(a) Within 10 days of the Director's receipt of a final proposed TERA, the Secretary must submit a notice for publication in the FEDERAL REGISTER advising the public:

(1) That the Secretary is considering a final proposed TERA for approval or disapproval; and

(2) Of any National Environmental Policy Act (NEPA) review the Secretary is conducting.

(b) The FEDERAL REGISTER notice will:

(1) Contain information advising the public how to request and receive copies of or participate in any NEPA reviews, as prescribed in subpart C of this part, related to approval of the final proposed TERA; and

(2) Contain information advising the public how to comment on a final proposed TERA.

### **§ 224.68 How will the Secretary use public comments?**

(a) The Secretary will review and consider public comments in deciding to approve or disapprove the final proposed TERA; and

(b) The Secretary will provide copies of the comments to the Designated Tribal Official;

(c) Upon mutual agreement between the tribe and the Secretary, the tribe may make changes in the final proposed TERA based on the comments received; and

(d) If the tribe revises the final proposed TERA based on public comments, the tribal governing body must approve the changes, the authorized representative of the tribe must sign the final proposed TERA as revised, and the tribe must send the revised final proposed TERA to the Director. The Secretary and the tribe will consult on

whether an extension of the review period is necessary under § 224.62(b).

### **Subpart C—Approval of Tribal Energy Resource Agreements**

#### **§ 224.70 Will the Secretary review a proposed TERA under the National Environmental Policy Act?**

Yes, the Secretary will conduct a review under the National Environmental Policy Act (NEPA) of the potential impacts on the quality of the human environment that might arise from approving a final proposed TERA. The scope of the Secretary's evaluation will be limited to the scope of the TERA. The public comment period, when required, under the NEPA review will occur concurrently with the public comment period for a TERA under § 224.67.

#### **§ 224.71 What standards will the Secretary use to decide to approve a final proposed TERA?**

The Secretary will consider the best interests of the tribe and the Federal policy of promoting tribal self-determination in deciding whether to approve a final proposed TERA. The Secretary must approve a final proposed TERA if it contains the provisions required by the Act and this part and the Secretary determines that the tribe has demonstrated sufficient capacity to manage the development of energy resources it proposes to develop.

#### **§ 224.72 How will the Secretary determine whether a tribe has demonstrated sufficient capacity?**

The Secretary will determine whether a tribe has demonstrated sufficient capacity under § 224.71 based on the information obtained through the application process. The Secretary will consider:

- (a) The specific energy resource development the tribe proposes to regulate;
- (b) The scope of the administrative or regulatory activities the tribe seeks to assume;
- (c) Materials and information submitted with the application for a TERA, the result of meetings between the tribe and a representative of the

Department and the Director's written report;

(d) The history of the tribe's role in energy resource development, including negotiating and approval or disapproval of pre-existing energy-related leases, business agreements, and rights-of-way;

(e) The administrative expertise of the tribe available to regulate energy resource development within the scope of the final proposed TERA or the tribe's plans for establishing that expertise;

(f) The financial capacity of the tribe to maintain or procure the technical expertise needed to evaluate proposals and to monitor anticipated activities in a prudent manner;

(g) The tribe's past performance administering contracts and grants associated with self-determination programs, cooperative agreements with Federal and State agencies, and environmental programs administered by the Environmental Protection Agency;

(h) The tribe's past performance monitoring activities undertaken by third parties under approved leases, business agreements, or rights-of-way; and

(i) Any other factors the Secretary finds to be relevant in light of the scope of the proposed TERA.

#### **§ 224.73 How will the scope of energy resource development affect the Secretary's determination of the tribe's capacity?**

The Secretary's review under § 224.72 of the tribe's capacity to manage and regulate energy resource development under the TERA will include a determination as to each type of energy resource development subject to the TERA for which the tribe seeks to regulate, and each type of regulatory activity the tribe proposes to assume. The Secretary's review of a TERA must be limited to activities specified by its provisions.

#### **§ 224.74 When must the Secretary approve or disapprove a final proposed TERA?**

The Secretary must approve or disapprove a final proposed TERA or a revised final proposed TERA within 270 days of the Director's receipt of a complete application for a TERA. With the